

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 488 of 1985

IN

SPECIAL CIVIL APPLICLATION LNO. 2017 OF 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and  
MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? YES
2. To be referred to the Reporter or not? YES
3. Whether Their Lordships wish to see the fair copy  
of the judgement? NO
4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? NO
5. Whether it is to be circulated to the Civil Judge?  
NO

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GOVIND GHELABHAI CHAUHAN

Versus

STATE OF GUJARAT

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Appearance:

MR SURESH M SHAH for Appellant

MR B.Y. MANKAD, AGP for Respondent No. 1

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CORAM : MR.JUSTICE B.C.PATEL and  
MR.JUSTICE C.K.BUCH

Date of decision: 02/12/98

ORAL JUDGEMENT

[Per B.C.Patel, J.]

1. The appellant - original petitioner before the learned Single Judge having failed in his attempt to quash and set aside an order rejecting his application u/s 20 of the Urban Land [Ceiling & Regulation] Act, 1976 (hereinafter referred to as 'the Act') has preferred this appeal against the dismissal of Special Civil Application.

2. It transpires from the record placed before us that the appellant is an agriculturist and is depending solely on agricultural income which he derives by use of agricultural land bearing survey No. 33 admeasuring 5 acres situated at Rajkot. An application was submitted before the State Government u/s 20 of the Act to exempt the vacant land in excess of the ceiling limit possessed by the appellant on the ground that he is an agriculturist and the land is used for only agricultural purposes. It transpires that, by an order dated 24/7/1984, the State Government [Deputy Secretary, Revenue Department] rejected application after giving an opportunity of hearing the appellant.

3. The State Government in its order pointed out that the land is located in a zone which is not an agricultural zone of urban area. Therefore, the land is liable to be used for nonagricultural purpose only. The State Government was of the further view that the land is required for public purpose namely, by Gujarat Housing Board and Rajkot Urban Development Authority. Considering that the priority is required to be given to such institutes which are public institutes or public bodies, the State Government held that public interest or the public purpose should be given priority against the interest of an individual. There cannot be dispute with regard to the proposition. However, Mr. Shah, learned counsel appearing in the matter for the appellant submitted that the State Government while deciding an application has to consider the circular issued by the Deputy Secretary to the Government of India bearing No. 2/31/77 UCU [I] dated 19th December 1977. He submitted that, learned Single Judge has erred in coming to the conclusion that order is not contrary to the guidelines given in resolution Annexure 'A' in absence of reasons given by the State Government in preferring the demand made by such authority. No reasons are given for not following Annexure 'A'. From the circular, it appears that representation was made to the Government of India about the restriction u/s 2 [a] [c] of the Act. It was pointed out that sub clause [c] to section 2[a] operates harshly against farmers. Even after the issuance of the

guidelines in the letter issued by the Government of India on 19th October, 1976, hardship continued. It appears that, considering the object of the Act and the agricultural activities, in para - 3 of the aforesaid letter, which we have reproduced hereunder, the State Government was required to consider the same while deciding an application u/s 20 of the Act.

3. I am directed to advise, therefore, that under section 20(1)(a) State Government may exempt in the public interest lands which are entered in the land records before the appointed day' as being used mainly for Agriculture and are being actually so used, even if they are specified in the Master plan for a purpose other than agriculture. The exemption should carry the following conditions.

- (i) That the land should actually be used only for agriculture.
- (ii) That whenever the land is proposed to be used for any other purpose, prior intimation should be given to the Government and the competent authority concerned.
- (iii) That the land should not be transferred by sale, gift, lease or otherwise, without the previous permission of the Government and that the land should not be sub-divided and sold. [there is, however, no objection to mortgage of the land without possession to support a loan from a bank or financial institution,] and;
- (iv) That if at any time the State Government is satisfied that any of the conditions [i] to [iii] above is violated, or if the State Government require the exempted land for its own use, then the State Government may withdraw the exemption under sub-section [2] of section 20.

This letter is a part of the Special Civil Application vide Annexure 'A' to the Special Civil Application.

4. As per the letter, it is not obligatory to exempt the land in view of the word used "may", but at the same time, if the agriculturist undertakes to use the land for agriculture purpose only and that he shall not transfer the same in any manner whatsoever, how that would affect adversely, has not been considered at all. If in a given case, demand made by Housing Board or some other Public Body is placed before the State Government while deciding the application, that can be taken into consideration, but in absence of any material mere stating that the land is required for public purpose, is not sufficient. There must be sufficient details indicating that particular Corporation or the Public Body has made a demand for the land stating area of the land required, purpose of seeking occupation of land etc.

5. From the contents of the Notification Annexure 'A', it appears that till the land is used for the purpose of agriculture, the same should be permitted to be used as such, unless the land is used for the purpose other than agriculture or the land is not possessed by the applicant for agriculture or that land is actually required for the public purpose giving details indicating the reasons for preference.

6. Mr. Mankad, learned Advocate could not point out any material despite the time given as to whether there was any material before the State Government about the demand being made by public sector, as mentioned in the order. Despite the sufficient time being given, nothing is produced before us. Therefore, in our opinion, the order can be said to be mechanical in so far as rejection of the application is concerned on the ground that it is required for the public purpose. The State Government should consider para - 3 of the circular aforesaid and the demand actually made by public body. It is submitted that there may be other circulars of subsequent dates. Suffice it to say that on the basis of the circular, the Court is deciding the matter and no other circular is brought to our notice. However, the State Government has to consider the application and it is always open to decide the application considering such circulars.

7. In view of what we have stated hereinabove, the order passed by the learned Single Judge is quashed and set aside. The petition stands allowed and as a result of which, the order passed by the competent authority [Annexure 'B'] to Special civil Application is also quashed and set aside. The State Government is directed to dispose of the application of the appellant u/s 20 of the Act within a period of six months from today, in

accordance with law and keeping in mind the circular referred to above or any other circulars issued thereafter.

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